ing payment of the premiums as a condition precedent to liability on the part of the insurance company, relieve the latter from liability;[16] while still others declare the policy forfeited, but allow recovery of the equitable value of the premiums paid.[17]

While some cases apparently lay down the rule in broad terms that the contract of agency is revoked by war,[18] the usual view is that this applies only to agencies requiring commercial intercourse, and that agencies which do not necessitate communication are not dissolved.[19] An excellent illustration of the former class of agencies is afforded by the recent case of *Distington Hematite Iron Co. Ltd.* v. *Possehl & Co.* [1916] 1 K. B. 811. In this case the defendants, a German firm, were the agents of the plaintiffs, a British firm, for the sale of the plaintiffs' products on the Continent. The contract of agency was declared by the court to involve a continuous relation on both sides, and was therefore held to be dissolved by the war, since any other conclusion would make a new contract for the parties. It results from this view of the contract of agency that, while an agent may receive payments for his principal, he cannot transmit the funds to him during the war.[20] And for the relationship to survive the outbreak of war, the assent of both principal and agent is necessary.[21]

POWER OF COURTS OVER MEASURES INITIATED BY THE PEOPLE.—Of recent years the people of many of our states, seeking a remedy for the supposed derelictions of their representatives, have adopted constitutional amendments providing for the initiative, the referendum, and the recall. By these provisions the legislative power of the state is vested in a legislative assembly, but the people reserve to themselves the power to propose laws and amendments, and to adopt or reject them independently of the legislative assembly, and also the power to adopt or reject any act passed by that assembly.[1] The first

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So, contracts insuring the property of an enemy against capture or destruction by the government of the insurer are dissolved by war. Furtado *v.* Rodgers, *supra; Ex parte* Lee (1806) 13 Ves. 64.

[16]Dillard *v.* Manhattan Life Ins. Co. (1871) 44 Ga. 119; Worthington *v.* Charter Oak Life Ins. Co. (1874) 41 Conn. 372.

[17]New York Life Ins. Co. *v.* Statham (1876) 93 U. S. 24.

[18]Howell *v.* Gordon (1869) 40 Ga. 302; Conley *v.* Burson (1870) 48 Tenn. 145; Blackwell *v.* Willard (1871) 65 N. C. 555.

[19]Monsseaux *v.* Urquhart (1867) 19 La. Ann. 482; see Small's Adm'r. *v.* Lumpkin's Ex'r. (1877) 69 Va. 832; *cf.* Buford *v.* Speed (1875) 74 Ky. 338.

[20]See Insurance Co. *v.* Davis (1877) 95 U. S. 425; Fisher *v.* Krutz and Campbell (1872) 9 Kan. 501; Small's Adm'r. *v.* Lumpkin's Ex'r., *supra.*

[21]Insurance Co. *v.* Davis, *supra.* Where it is manifestly for the benefit of the principal that the agency continue, his assent will be presumed; but where it is clearly against his interest, his acquiescence must be proved. Williams *v.* Paine, *supra.* Obviously an agent cannot be appointed during war. United States *v.* Grossmayer (1869) 76 U. S. 72. But if the property of an alien enemy is proceeded against, he may apparently, even during a war, appoint an attorney to represent him in the action. See Buford *v.* Speed, *supra.*

[1]The constitutions of the following states make the initiative and the referendum applicable to both statutes and constitutional amendments: Arizona, Art. IV, Pt. I, § 1; Arkansas, Art. V, § 1; California, Art. IV, § 1; Colorado, Art. V, § 1; Missouri, Art. IV, § 57; Nebraska, Art. III, § 1; Nevada, Art XIX, § 3; North Dakota, Art. II, § 25, Art. XV, § 202;

power reserved to the people is known as the initiative, the second as the referendum. So eager have the people shown themselves to take the reins of government into their own hands that the constitutions generally declare that the veto power of the governor shall not extend to measures referred to the people;[2] and in some states the legislature either has no power to repeal a measure passed by means of the initiative or referendum,[3] or else only a limited power.[4]

The initiative and the referendum constitute a departure from previously existing forms of government; and many problems must arise for the courts in such a great change from representation to direct action by the people. It has been decided that the new system is not repulsive to the republican form of government guaranteed to the states by Article IV, § 4 of the Federal Constitution, but rather is in harmony with it;[5] and the Supreme Court of the United States has held that the question is a political one for Congress alone.[6] An interesting problem arises in the recent case of *State ex rel. Berry* v. *Superior Court* (Wash. 1916) 159 Pac. 92, as to the power of the courts over initiative measures. An act to facilitate the operation of the initiative and referendum provided that publicity be given to measures filed with the secretary of state by means of not more than two arguments in support nor more than three in opposition to such measure, to be printed at the expense of the person submitting them, and circulated among the citizens by the secretary of state.[7] It was sought to enjoin the secretary of state from printing the blank petitions and the arguments for a proposed initiative measure on the ground

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Oklahoma, Art. V, § 1; Oregon, Art. IV, § 1. An amendment to this effect has been proposed in Minnesota, Session Laws 1915 c. 385. By the constitutions in Washington, Art. II, § 1; Montana, Art. V, § 1; Utah, Art. VI, § 1 (2); South Dakota, Art. III, § 1, the initiative is applicable to laws only. The Ohio constitution, Art. II, § 1 *et seq.*, provides for an initiative by which laws and amendments are proposed, not to the people directly, but to their legislature.

[2]Arizona, Art. IV, Pt. I, § 1 (6); Arkansas, Art. V, § 1; California, Art. IV, § 1; Colorado, Art. V, § 1; Missouri, Art. IV, § 57; Montana, Art. V, § 1; North Dakota, Art. II, § 25; Oklahoma, Art. V, § 3; Oregon, Art. IV, § 1; South Dakota, Art. III, § 1. This is true as well of initiative as of referred measures. State *v.* Kline (1907) 50 Ore. 426, 93 Pac. 237. In Nebraska, Art. III, § 1 D, and Washington, Art. III, § 1 D, the veto power of the governor is declared not to extend to measures initiated by or referred to the people. By the Ohio constitution, Art. II § 1 B, the veto power does not extend to initiative measures approved by the people.

[3]Arizona, Art. IV, Pt. I, § 1 (6).

[4]Art. II, § 1c, of the Washington constitution deprives the legislative assembly of the right to repeal or amend any initiative measure for a period of two years after its passage. But ordinarily the assembly retains its right to repeal or amend any statute. Oklahoma, Art. V, § 7; *In re* Senate Resolution (1913) 54 Colo. 262, 130 Pac. 333; see Straw *v.* Harris (1909) 54 Ore. 424, 430, 103 Pac. 777.

[5]Kadderly *v.* City of Portland (1903) 44 Ore. 118, 75 Pac. 222. The initiative and the referendum as applied to municipalities do not raise the question whether a state has a republican form of government. State *ex rel.* Wagner *v.* Summers (1913) 33 S. D. 40, 144 N. W. 730.

[6]Pacific States Tel. & Tel. Co. *v.* Oregon (1911) 223 U. S. 118, 32 Sup. Ct. 224. Congress has settled the matter by admitting Oklahoma into the Union when its constitution contained initiative and referendum provisions

[7]Session Laws 1913 c. 138 §§ 26, 27.

that it contained a preamble which was improper and argumentative, the purpose of which was to have a third argument in favor of the measure printed at the expense of the state. The lower court held that it had no jurisdiction, because the question raised was political. But in a proceeding to review, the Supreme Court of Washington, by a vote of five to four, granted the injunction.

Though the preamble is not, properly speaking, an essential part of an act and cannot control the act,[8] it serves a useful purpose in determining the intent of the legislature where the language used is ambiguous.[9] It is a part of the bill. Under our division of governmental functions into the executive, the legislative and the judicial, the judiciary have no power to interfere with the other branches.[10] Are the various steps in the process of proposing and adopting an initiative measure the action of a legislative body? A legislative body has been defined to be one authorized and able to enact laws for the community.[11] As a matter of authority, the cases are few which have considered the question involved in the principal case. However, the general view is that the people acting under the initiative and the referendum are a legislative body and that therefore the secretary of state cannot be enjoined from filing an initiative measure.[12] As a matter of principle, it would seem that under the initiative and referendum there are two legislative bodies, the legislative assembly, and the people acting in proposing and adopting laws. The action of one is just as much legislation as is the action of the other; and unless it is specifically provided that the courts have jurisdiction over initiative measures, and to what extent, the courts ought not to interfere. It is true that strictly ministerial acts as distinguished from executive or political ones may be controlled by the courts;[13] but the problem involved in the principal case is not settled by saying that the secretary of state in filing a petition is acting ministerially and is therefore subject to the power of the courts. The secretary's act in itself is not of importance; but it is a necessary step in the process of legislation. An injunction against the secretary of state interferes with the exercise of the legislative function by the people. The majority of the judges in the principal case were doubtless anxious to prevent the waste of public money, yet the better reason is with the minority, who considered that the court was powerless to interfere with the legislative department of the government.[14]

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[8]Jones, Statute Law Making, 70 *et seq.*; Sedgwick, Statutory and Constitutional Law, 64.

[9]Beal, Cardinal Rules of Legal Interpretation (2nd ed.) 253; Brown *v.* Erie R. R. (1914) 87 N. J. L. 487, 91 Atl. 1023.

[10]Pacific States Tel. & Tel. Co. *v.* Oregon, *supra*; Vicksburg R. R. *v.* Lowry (1883) 61 Miss. 102.

[11]See Burke *v.* Wood (1908) 162 Fed. 533, 538.

[12]State *ex rel.* Bullard *v.* Osborn (1914) 16 Ariz. 247, 143 Pac. 117; Pfeifer *v.* Graves (1913) 88 Ohio 473, 104 N. E. 529; Duggan *v.* City of Emporia (1911) 84 Kan. 429, 113 Pac. 436; State *ex rel.* Att'y Gen'l *v.* Dunbar (1906) 48 Ore. 109, 85 Pac. 337; *cf.* Friendly *v.* Olcott (1912) 61 Ore. 580, 123 Pac. 53.

[13]2 High, Injunctions (4th ed.) § 1326.

[14]Session Laws 1913 c. 138 of the State of Washington does not anywhere give the courts power to revise or supervise the contents of an initiative measure. By § 17 the court's power to enjoin the secretary of state can be used only where there is a question as to the validity and number of the signatures to a petition.